Sumukha Synthetics TCA No. 759 of 2018 Madras high Court

Issues discussed and addressed:

Disallowance u/s 40A(3)

Facts of the Case:

The assessment of assessee partnership firm was completed under section 143(3) of the Act. The Commissioner of Income-tax exercised his power under section 263 of the Act on the ground that certain payments made by the assessee to M/s. Sitalakshmi Mills Ltd. ['M/s. SLM' for brevity] towards conversion charges paid by cash were omitted to be disallowed under section 40A(3) of the Act. After hearing the assessee, the Commissioner set aside the assessment order and directed the Assessing Officer to make fresh assessment after considering the applicability of Section 40A(3) of the Act. On such direction, the Assessing Officer made an addition of Rs. 61,32476/- under section 40A(3) being 20% of total cash payment of Rs. 3,06,62,382/-.

Case of Revenue

It is the argument of the revenue that none of the contingencies mentioned in clauses (*a*) to (*l*) in Rule 6DD are attracted in the instant case. Further, it is submitted that the Assessing Officer rightly held that the decision in the case of *Attar Singh Gurumukh Singh* v. *ITO* [(1991) 191 ITR 667] is not applicable to the facts and circumstances of the case because the Punjab National Bank had directed M/s. SLM to immediately close their account with the State Bank of India, Sivagangai and all transactions should be routed through their account in their bank. It is submitted that this direction was issued because M/s.SLM had been declared as a sick industry in the year 1999, Punjab National Bank was appointed as an operating agency and the said Company was under a scheme of rehabilitation and in the path of recovery. Therefore, it is submitted that it is not as if there is no banking facility available to bring the case of the assessee within the ambit of proviso under sub-section (3) of Section 40A nor it can be considered as a business expediency nor there are any other relevant factors to justify such huge payments in cash.

The revenue placed reliance on the following decisions

a. CIT, Madurai v. Venkatadhri Constructions [(2013) 31 taxmann.com 71(Mad.)],
b. P.K. Ramasamy Nadar & Bros. [(2014) 41 taxmann.com 538 (Madras)],
c. Natesan Krishnamurthy [(2019) 103 taxmann.com 342(Madras)],
d. N. Mohammed Ali v. ITO, Ward-VII(2), Chennai [(2016) 65 taxmann.com 189(Madras)] and
e. CIT v. A.D. Jayaveerapandia Nadar & Sons [(2007) 162 Taxman 195(Madras)].

Case of Assessee

The decision in Attar Singh Gurumukh Singh was rightly applied by the Tribunal as in the said case while testing the vires of Section 40A(3), the Hon'ble Supreme Court has explained the reason behind the introduction of the said provision and has held that where the payment is genuine there cannot be denial of deduction of genuine and *bonafide* business expenditure merely because the assessee could not make the payment as provided under section 40A(3) of the Act. The learned counsel for the assessee placed reliance on the following decisions;

f. Walford Transport (Eastern India) Ltd. v. Commissioner of Income-tax [(1999) 240 ITR 902]

g. CIT v. Rhydburg Pharmaceuticals Ltd. [(2004) 269 ITR 561]

Further it is argued that Rule 6DD of the Rules merely sets out the circumstances under which the assessee can claim exemption provided under section 40A(3) and it is illustrative and not exhaustive in this regard and reliance was placed on the decision in the case of *CIT* v. *Chrome Leather Co. (P.) Ltd.* [(1999) 235 ITR 708] (para 8) and *Giridharlal Goenka* v. *CIT* [Manu/WB/0114/1988] (para 14).

Further it is submitted that there is adequate evidence to prove that the assessee was compelled to make cash payment for the conversion work undertaken by M/s. SLM as it had incurred expenditure for restructuring its machinery to enable to cater to the need of the assessee and maintain quality.

Held by the Authorities:

In terms of Section 40A(3), the assessee is prohibited from effecting cash payments over and above Rs. 20,000/-. Rule 6DD states that no disallowance under Sub-section (3) of Section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft exceeds Rs. 20,000/- in the case and circumstances specified in clauses (a) to (l) of Rule 6DD.

In terms of the first proviso under section 40A(3A), it is the assessee who has to set out the circumstances which led to effect payment in cash in excess of the amounts stipulated in Section 40A(3) and this explanation needs to be tested having regard to the nature and extent of banking facilities, consideration of business expediency and other relevant facts.

The assessee has entered into an agreement for conversion on job work basis. The assessee is required to act as a prudent businessman, so that the job work is completed to his satisfaction with optimum quality.

This has led the assessee to effect payments in cash. The argument of the revenue is on the ground that in order to avoid the attachment of the bank account the assessee has effected payment in cash. It is to be noted that what is relevant to be seen insofar as Section 40A(3) is the conduct of the assessee and not the payee. The question would be did the assessee have a reasonable cause to effect payment in cash. If the assessee has a reasonable explanation, then the proviso under section 3A would stand attracted and the assessee would be entitled to relief. It may be true that merely because the payee is identifiable, it will automatically exonerate the assessee. We are not laying down any such broad principle. The fact that the payee was identifiable and not a fictitious person would go to show the bonafides of the transaction and this is what is required to be considered from the angle of a commercially expedient and prudent business house. Thus, we find that the Tribunal rightly interfered with the order passed by the Assessing Officer as confirmed by the CIT(A) and granted the relief to the assessee.

PSTS Heavy Lift and Shift Ltd. Tax Case Appeal Nos. 2193 to 2195 of 2008 & 979 of 2009 Madras high Court

Issues discussed and addressed:

Income from House Property vs PGBP

Facts of the Case:

As per the Assessment Order passed in the said case, the assessee company was incorporated to carry out the business of providing infrastructure amenities, work space for IT companies and constructed the property in question and let it to one such IT company M/s. Cognizant Technology Solutions India Ltd. The assessee claimed the rental income to be taxable as its 'Business Income' and not as 'Income from House Property', but the Assessing Authority as well as the Appellate Authorities held against the assessee and held such income to be income from house property.

Held by the Authorities:

We are of the clear opinion that once the property in question is used as business asset and the exclusive business of the assessee company or firm is to earn income by way of rental or lease money, then such rental income can be treated only as the 'Business Income of the assessee' and not as 'Income from House Property'. The Heads of Income is divided in various six heads, including 'Income from House Property', which defines the specific source of earning such incomes. The income from house property is intended to be taxed under that head mainly if such income is earned out of idle property, which could earn the rental income by user thereof from the lessees. But, where the income from the same property in the form of lease rentals is the main source of business of the assessee, which has its business exclusively or substantially in

the form of earning of the rentals only from the Business Assets in the form of such landed properties, then, in our opinion, the more appropriate Head of Income applicable in such cases would be 'Income from Business'.

Since, in the present cases, it is not even in dispute that all the exclusive and main source of income of the assessee was only the rentals and lease money received from the lessees in both the cases and the Assessing Authority took a different and contrary view mainly to deny the claim of depreciation out of such business income in the form of rentals, without assigning any proper and cogent reason. Merely because the lease income or rental income earned from the lessees, could be taxed as 'Income from House Property', ignoring the fact that that such rentals were the only source of 'Business Income' of the assessee, the Authorities below have fallen into the error in holding that the income was taxable under the Head Income from house property. The said application of the Head of Income by the Authorities below was not only against the facts and evidence available on record, but against the common sense itself.

In view of the aforesaid, where the facts of the cases are undisputed that both the assessees in the present case carry on the business of earning the rental income, as per the Memorandum of Associations only and the fact is that they were not carrying on any other business, compels us to come to the conclusion that the present appeals of the assessees are required to be allowed. The same are accordingly allowed and the question of law framed above is answered in favour of the assessee and against the Revenue.

Judgments Relied upon by the Authorities:

A. Chennai Properties Investments Limited v. Commissioner of Income Tax (2015) 373 ITR 673 (SC)
B. Rayala Corporation Private Limited v. Assistant Commissioner of Income Tax (2013) 386 ITR 500 (SC)
C. Raj Dadarkar & Associates v. Assistant Commissioner of Income Tax (2017) 394 ITR 592 (SC)

Dipankar Mohan Ghosh W.P.(C) 9859/2019 & CM Appl. 40767/2019 Delhi high Court

Issues discussed and addressed:

Exemption u/s 54

Facts of the Case:

The respondent assessee is a Non-Resident Indian. He sold his residential property bearing No. 1/26, Shanti Niketan, New Delhi and earned long term capital gain which was partially invested in purchasing the property, i.e. residential Flat No. 47, Abingdon Court, Abingdon Villas, Kensington, London for a consideration of GBP 26,75,000 plus stamp duty and other expenses estimated at GBP 1,89,974.34

(Approx.), aggregating to GBP 28,64,974.34. The said consideration was paid out of remittances made by the respondent from India and the sale consideration received by him in respect of the aforesaid Indian asset.

The said authority has held that the respondent/ applicant would be eligible for the benefit available under the provisions of Section 54 of the Income-Tax Act and to the extent of re-investment in residential property outside India, i.e. in London in this particular case.This judgment of AAR was challenged before High Court by Revenue.

Held by the Authorities:

Reference has also been made to the *Circular No. 01/2015* containing explanatory notes to the provisions of the Finance (No. 2) Act, 2014 whereby section 54 of the Act was amended to specifically include the word "in India" in respect of the residential house acquired out of the long term capital gain earned by the assessee. The said explanatory note in terms provides that the said amendment would take effect from 1-4-2015 and would, accordingly, apply for the assessment year 2015-16 and subsequent assessment years. Thus, the said amendment is prospective and would not apply in the facts of the present case since the respondent sold the residential property in India and earned long term capital gain in the assessment year 2012-13 and invested the said gain in the same year for purchase of the property, as aforesaid, in London.

Judgments Relied upon by the Authorities:

a. Leena JugalKishor Shah v. Asstt. CIT (2017) 392 ITR 18 (Guj.)
b. International Taxation v. Anurag Pandit ITA No.1169/2018] Dated 14-5-2019

Shreeji Corporation ITA No. 583/Ahd/2016 Ahmedabad ITAT

Issues discussed and addressed:

Issue No 1 Labour Expense	Issue No 2 Salary Expense Against Assessee
Issue No 3 Supervision Charges Against Assessee	Issue No 4 Unexplained Credit
Issue No 5 Unexplained Expenditure Against Assessee	Issue No 5 Remuneration to HUF

Facts of the Case:

Return of income declaring income of Rs. 21,24,554 was filed on 30-9-2011. The case was subject to scrutiny and notice under section 143(2) of the act was issued on 28-9-2012. Assessment order under section 143(3) of the act was passed on 25-1-2014 and total income was assessed at Rs. 1,36,92,398 after making several additions under various heads mainly on account of disallowance of various expenses.

Held by the Authorities with respect to issue No 1:

During the course of assessment, the assessing officer noticed that assessee had claimed Rs. 1,65,31,290 as labour expenses incurred during the year under consideration. On verification of the detail furnished, the assessing officer observed various discrepancies in the supporting material furnished by the assessee i.e. bills were undated, unsigned, no address, no serial no etc. Considering such discrepancies as elaborated at page no. 4 to 8 of the assessment order, the assessing officer has disallowed 50% of such labour expenses and added to the total income of the assessee.

The Commissioner (Appeals) has stated that assessee has also produced bills in respect of most of the discrepancies and the gross profit of the assessee firm has tremendously gone up from 4.89% to 14.01% in the earlier years. The learned Commissioner (Appeals) has held that many discrepancies noted by the assessing officer were explained by the assessee during the course of appellate proceedings but many have not been explained. Therefore, the learned Commissioner (Appeals) has restricted he disallowance to the extent of Rs. 25% to the amount of Rs. 37,28,270. In the light of the findings of the learned Commissioner (Appeals) and considering the there was tremendous jump in the gross profit from 4.89% to 14.01% in the year, we consider it will be reasonable to restrict the disallowance to the extent of 12.5% to meet the end of justice for want of verification on account of not providing proper supporting bill/vouchers.

Held by the Authorities with respect to issue No 2:

During the course of assessment, the assessing officer noticed that assessee has claimed salary expenses of Rs. 9,47,366. On verification, the assessing officer stated that assessee could not produce relevant evidences in support of claim of salary expenses to the amount of Rs. 4.25 lacs. Consequently, the assessing officer has disallowed the salary expenses of Rs. 4.25 lacs.

During the course of appellate proceedings before us, the assessee has reiterated the same submission which was furnished before the lower authorities. The assessee has only furnished the copies of ledger account but failed to demonstrate with relevant evidences, the nature of work done by the employees, copies of bank statement reflecting the payment made and other relevant evidences that the aforesaid employees have employed with assessee. Accordingly, this ground of appeal of the assessee is dismissed.

Held by the Authorities with respect to issue No 3:

During the course of assessment, the assessing officer has disallowed supervision charges of Rs. 2,22,200 (Rs. 1,61,600 + Rs. 60,600) as the assessee has failed to substantiate the incurring of such expenses with relevant evidences.

We have heard both the sides on this issue and perused the material on record. It is noticed that assessee has claimed that such supervision charges paid to Shri Gaurang Patel, however, the assessee has failed to prove the genuineness of incurring of such expenditure with relevant supporting documentary evidences about the nature of work performed by him and details of payment etc., therefore, we do not find any reason to interfere in the finding of learned Commissioner (Appeals). Accordingly, this ground of appeal of assessee is dismissed.

Held by the Authorities with respect to issue No 4:

During the course of assessment, the assessing officer has treated the receipt of Rs. 6,50,000 from Mehta Chhayaben Umeshbhai and Rs. 12,90,000 received from Patel Bharatkumar as unexplained credit stating that identity of the payer, genuineness of the transaction and creditworthiness were not proved.

We have heard both the sides and perused the material on record. The assessing officer has treated Rs. 19,40,000 as unexplained stating the identity and creditworthiness of the parties and the genuineness of the transaction were not proved.. The assessee has claimed that this amount was received from these persons on account of booking amount and produced copies of sale deed to establish genuineness of the transaction. The assessee has produced sale deed made with the aforesaid parties along with the identity and address of the parties from whom booking amount received. The assessing officer has not made any inquiry/verification from the aforesaid parties to contradict the claim of the assessee that amount was received as booking amount. In the light of the above facts and circumstances, we consider that decision of learned Commissioner (Appeals) is not justified. Therefore, this ground of appeal of the assessee is allowed.

Held by the Authorities with respect to issue No 5:

During the course of assessment, the assessing officer noticed that assessee has claimed payment of Rs. 4,12,500 to Shri Chaudharyshivabhai Keshavbhai. However, the assessee has failed to substantiate the genuineness of such payment with any relevant supporting evidences.

It is observed that before the lower authorities, the assessee has not submitted any evidences, detail and nature of expenditure incurred, therefore, the claim of the assessee was disallowed. Even during the course of appellate proceedings before us, the assessee has failed to furnish any relevant supporting evidences to demonstrate that the aforesaid expenditure was incurred for the purpose of business, therefore, we do not find any merit in this ground of appeal of the assessee and the same is dismissed.

Held by the Authorities with respect to issue No 6:

At the time of assessment, the assessing officer noticed that assessee has claimed a sum of Rs. 7,50,735 as remuneration paid to M/s. Dashrathbhai S. Chaudhary, HUF during financial year 2011-12. The assessing officer was of the view that as per explanation 4 to section 40(b) only working partner who is also an individual is entitled to remuneration and a partner acting in a representative capacity cannot claim deduction. Therefore, the claim of remuneration payment was disallowed.

On a reading of this clause it is clear that the remuneration was paid to the partners for attending to the affairs of business- of the partnership firm as working partners. Therefore, the Commissioner (Appeals) was not justified in holding that there was no evidence that they were working partners. In view of the Supreme Court decision in the case of *Rashiklal & Co. (1998) 229 ITR 0458 (SC) : 1998 TaxPub(DT) 1049 (SC)* it is the individual who is partner in the firm and it is immaterial as to in what capacity he is the partner. His obligation may be towards others, but vis a vis the firm he is the partner in his individual capacity. Even otherwise, as held in the case of *Kshetra Mohan Sannyasi Charan Sadhukhan v. CEPT 4a Hindu* undivided family is included in the expression 'person' as defined in the Indian Income Tax Act as well as in the Excess Profits Tax Act, hut it is not juristic person for all purposes. When two kartas of two Hindu undivided families enter into a partnership agreement the partnership is popularly described as one benveen the two Hindu undivided families hut in the eye of law it is partnership between the two kartas and the other members of the families do not ipso facto become partners. There is, however, nothing to prevent the individual members or one Hindu undivided family from entering into a partnership with the individual members of another Hindu undivided family and in such a case it is a partnership between the individual members and it is wholly inappropriate to describe such a partnership as one between two Hindu undivided families. Thus The karta of HUF is a working partner and, therefore, the remuneration paid to him is allowable.

Judgments Relied upon by the Authorities:

a. Hemtej Imprint v. Dy. CIT vide ITA No. 1520/Ahd/2010, dt. 30-7-2010
b. P. Gautam & Co. v. Joint CIT Range-III Ahd (2011) 14 taxman.com 79 (Ahd)
c. Kids Suff (2002) 083 ITD 0268 (Del)
d. Gandhi Babula Bhogilal & Co. in ITA No. 2380/Ahd/1995
e. Sujat Enterprises in ITA No. I083/Ahd./1996
f. Smruti Trading Co. (2001) 070 TTJ 0114 (Mum)

Ram Prasad Meena IT Appeal No. 278 (JP) of 2020 Jaipur ITAT

Issues discussed and addressed:

Issue No 1 Addition u/s 56(2)(vii)(b)(ii) Issue No 2 Addition for Unexplained Investments

Facts of the Case:

The assessee filed his return of income declaring total income of Rs. 1,96,940/- on 8-07-2014 without specifying the nature of income and nature of business. The assessment was completed u/s 143(3) of the Income-tax Act, 1961 on 30th Dec,. 2016 by ITO concerned by making addition of Rs. 77,74,535/- u/s 56(2)(vii)(b)(ii) of the Act and Rs. 40,94,290/- as unexplained investment on purchase of agricultural land at a total income of Rs. 1,20,65,770/-.

Held by the Authorities with respect to issue No 1:

From the record, we noticed that the AO had made addition in the case of the assessee u/s 56(2)(vii)(b)(ii) of the Act on the ground that agricultural land purchased by the assessee for stamp duty purposes is valuing at Rs. 1,18,68,825/- and during the year the father of the assessee had purchased the said agricultural lands in the name of the assessee for a total consideration of Rs. 40,94,290/-. Therefore, the AO had made addition on the difference amount of Rs. 77,74,535/-, applying the provisions of Section 56(2)(vii)(b)(ii) of the Act by holding that agricultural land is very well covered under the term ''immovable property'' and thus falls within the purview of Section 56(2)(vii)(b)(ii) of the Act.

We are of the view that any property which is not a ''capital asset'' is not covered within the meaning of ''movable'' or ''immovable properties'' u/s 56(2)(vii) of the Act. In the present case, the agricultural land purchased by the assessee is situated at village Mandana, Kota which situated at a distance of 28 KM from Municipal Limits of Kota. Therefore, the agricultural land purchased in the name of the assessee is not a ''capital asset'' as per provisions of Section 2(14) of the Act and it is not covered by the definition of ''property'' given in Explanation to Section 56(2)(vii)(b) of the Act. Thus, we direct the AO to delete the addition.

Judgments Relied upon by the Authorities:

ITO v. Shri Trilok Chand [ITA No. 449/JP/2018 order dated 26-05-2020]

Held by the Authorities with respect to issue No 2:

From the facts on record, we found that the assessee has shown income of Rs. 1,96,340/- in the return of income whereas the agricultural land purchased is Rs. 40,94,290/-. In this respect, the assessee has categorically explained that his father was having agricultural land of 30 Bigha which was irrigated. The

assessee in support of the agriculture income filed the Khasra Girdawawri, receipt from sale of crop in Krishi Mandi and the affidavit of his father. However, the AO held that the evidence of agricultural income filed by the assessee in his return is meager and the assessee was not able to prove the immediate source of investment in the purchase of land.

In this case, we noticed that there is no dispute as to the facts that source of investment in the agricultural land is out of the agricultural income earned by the family out of the ancestral agricultural land at Village Chadawad. According to the assessee, this land is fully irrigated in which various crops like, wheat, dhaniya, sarso, soyabean, lahsun etc. are cultivated. The ld.AR of the assessee has drawn our attention through letter dated 6-09-2016 (PBP 6) and explained that generally the cultivation of crops is done twice in the year in addition to the seasonable vegetables. The vegetables and Lahsun are sold in local market/vegetable mandi for which is it not practically possible to get the sale receipts. However, on the contrary, the crops like sarso, soyaabean, wheat, tilli etc. is sold in Krishi Mandi Samiti through Adhatiya for which the mandi receipts are available.

ll the above evidences are only an indication of the agricultural income of the assessee and the above details do not include the sale of lahsum and vegetables which are sold in the local market. Thus the average income from sale of Lahsoon according to the assessee per bigha comes to Rs. 30,000/- to Rs. 35,000/- per bigha *i.e.* Rs. 9.00 lacs to 10.00 lacs per annum. Similarly, the realization according to the assessee, from sale of vegetables is also Rs. 30,000/- to Rs. 40,000/- per bigha *i.e.* Rs. 9.00 lacs to Rs. 12.00 lacs per annum. Therefore, after taking into consideration the agricultural expenses and household expenses, the net savings from the agriculture in the case of the assessee is approximately Rs. 10.00 lacs per annum which is around Rs. 25,000/- to Rs. 30,000/- per bigha and it is quite reasonable.

It is an undisputed fact that the assessee belongs to an agricultural family and involves in the agricultural activities themselves. Therefore, we are in agreement with the submission of the assessee that expenditure on agriculture is hardly 40% as entire family members are involved in the agricultural activities. Therefore, in such circumstances, the income from agriculture according to us should have been estimated at 60% of sale receipts.

Thus if we consider the income/savings of the assessee for the last 04 years as has been mentioned in the chart w.e.f. for A.Y. 2010-11 to Assessment Year 2013-14 then it comes to approximately Rs. 40.00 lacs and in this way by considering the income from agriculture as has been calculated in the preceding para, the bifurcation of which is Rs. 12,93,243/- from sale of agriculture crop and approximately Rs. 40.00 lacs from

the sale of Lehsun and Vegetables for the last 04 years which is quite sufficient and fully explain the source of investment in the purchase of agricultural land.

Fozia Khan ITA No. 246 (JP) of 2019 Jaipur ITAT

Issues discussed and addressed:

Issue No 1 Year from which Indexation is required to be claimed

Issue No 2 Expenditure on Commission paid to broker for sale of capital asset

Issue No 3 Claim of Exemption u/s 54 Against Assessee

Facts of the Case:

The assessee is an Individual and filed her return of income on 31st March, 2014 declaring total income of Rs. 4,63,020/-. During the year under consideration the assessee has sold a residential house for a total consideration of Rs. 1,98,00,000/-. The assessee has computed the Long Term Capital Gain of Rs. 63,17,562/- after claiming cost of indexation. The assessee has also claimed deduction under section 54 on account of purchase of a house property for a consideration of Rs. 90,06,910/-. Accordingly the assessee has declared Nil taxable income from Long Term Capital Gain.

During the assessment proceedings, the AO noted that the assessee has calculated indexed cost of the property in question by applying the DLC rate as on the date of Gift by which the assessee received the property on 11-8-2008 as against the actual cost of acquisition of fair market value as on 17-9-1988 when the Donor has acquired the property. The AO accordingly re-calculated the indexed cost by considering the actual cost of acquisition and stamp duty paid by the Grandmother of the assessee at the time of acquisition on 16-9-1988. The AO has also considered the JDA development expenses incurred by the Grandmother as well as the construction cost of the property. However, the AO has taken the indexation only from the date of gift till the sale of the property as against from the date of acquisition of the property by the Grandmother of the assessee.

Held by the Authorities with respect to Issue No 1:

There is no dispute that the AO has applied provisions of section 49(1) which is applicable in this case as the mode of acquisition by the assessee is Gift and, therefore, the cost of acquisition of the property has to be considered as in the hands of previous owner. To that extent the AO was right in considering the actual cost of acquisition in the hands of the previous owner, however, while calculating the indexed cost, the AO has applied the indexed cost from 2008-09 instead of 1988 when the property was acquired by the previous owner. Hence, we direct the AO to compute cost of acquisition by taking the year of acquisition as 1988

when the property was acquired by the previous owner and not the year of Gift. Accordingly, ground no. 1 of the assessee's appeal is allowed.

Held by the Authorities with respect to Issue No 2:

In the transaction of sale of property of such a high value of about Rs. 2,00,00,000/-, service of real estate agent is bound to be availed by the assessee who is a lady. Further, the preparation of the documents being Sale Deed, purchase of stamp duty and other documents and formalities require the assistance and help of a person who is well versed and having the experience of such work. Therefore, there is a prevailing practice of charging 2% of the sale consideration by the real estate Agents for providing the service of documentation, scrutiny of the documents and assisting the party in registration of the document. They are also performing the functions as they inter-face between the seller and buyer and ensures fair play between the parties regarding the sale consideration of the property transferred from one party to another as well as the proper title of the seller over the property. Therefore, the property agent is not merely helping in registration of the property but he is also instrumental in finding out the buyer and seller as well as ensuring the clear title as well as the payment of the consideration. Therefore, once the transfer of the immovable property requires documentation, scrutiny of the documents and title, then the expenditure is bound to be incurred in respect of such work performed by the real estate Agents. Hence in the facts and circumstances of the case, we allow the expenditure @ 2% of the sale consideration which is a prevailing rate for such type of transactions while computing the Long Term Capital Gain.

Held by the Authorities with respect to Issue No 3:

The ld. A/R has also raised a point regarding allowing the deduction under section 54 in respect of the payment made by the assessee towards furniture and fixtures purchased by the assessee along with new house property. He has pointed out that in the purchase document the consideration is shown towards purchase of the residential house but vide a separate agreement dated 20th July, 2012 the assessee has also paid Rs. 14,00,000/- towards furniture and fixtures.

The assessee has not claimed such a payment as part of the investment made in the new residential house for the purpose of deduction under section 54 of the IT Act. Even before the LD. CIT (A), the assessee has not raised such a ground and only two grounds which are raised before the Tribunal were raised before the LD. CIT (A). Therefore, such a plea which is completely new and requires investigation of new facts not brought before the AO or LD. CIT (A) cannot be accepted at this stage.

N. Ramaswamy ITA No. 925/Chny./2019 Chennai ITAT

Issues discussed and addressed:

Exemptions u/s 54F

Facts of the Case:

AO allowed assessee's claim of exemption under section 54F. However, CIT invoking revision power under section 263, denied the said exemption on the ground that the assessee acquired property by way of perpetual lease deed agreement and therefore, it could not be construed as outright/absolute purchase of the property. Assessee submitted that as the lease was for unlimited period and he had enduring right to possess and enjoy the property as residential house for unlimited period, thus, by virtue of section 2(47)(vi) read with section 269UA(2)(iii)(f), it had to be construed as acquisition of the property, and hence, he would be eligible for exemption under section 54F.

Held by the Authorities:

As per section 2(47)(vi), the transaction of perpetual lease agreement by which the assessee took possession of property for unlimited period has to be construed as purchase of property within the meaning of section 54F. Furthermore, section 269UA(2)(iii)(f) provides that the acquisition of property by perpetual lease exceeding the period of twelve years has to be construed as purchase within the meaning of section 54F. In instant case, as there was a perpetual lease agreement exceeding twelve years and assessee was in possession of property, thus, in view of sections 2(47)(vi) and 269UA(2)(iii)(f), the assessee would be entitled to deduction under section 54F. Hence, the order of CIT passed under section 263, would not be sustainable.

Network Construction Company ITA No. 2279 (MUM) of 2017 Mumbai ITAT

Issues discussed and addressed:

Applicability of Section 50C in case of Sale of Development Rights

Facts of the Case:

Assessee purchased development rights in respect of 7 buildings from Jayraj Devidas and others. This development right in respect of three buildings was shown on the asset side of the Balance sheet under the head 'Investments' as on 31-3-2010 relevant to assessment year 2010-11. Subsequently, assessee entered into a Joint Venture agreement and agreed to contribute the said development right as 'capital contribution' at an agreed consideration of Rs. 5 crores to Benchmark Properties, i.e. the AOP.

The assessee filed its return of income for assessment year 2012-13 and disclosed the amount of Rs. 5 crores as 'capital contribution'. The assessee has disclosed development rights in respect of 3 buildings under the asset side of the Balance sheet under the head 'Investments' and *vide* the Joint Venture agreement dated 1-7-2010, assessee has agreed to contribute the said remaining development right as 'capital contribution' for an agreed consideration of Rs. 5 crores to the AOP, M/s. Benchmark Properties. The Assessing Officer while framing assessment treated transfer of the development right in the three buildings under section 50C of the Act inspite of claim made by assessee that provisions of Section 45(3) of the Act will apply. The Assessing Officer accordingly treated the same as 'capital asset' and computed the value as per Stamp Valuation authority at Rs. 10,10,47,000/-, thereby assessing the long term capital gains at Rs. 5,10,47,000/-.

Held by the Authorities:

We noted that the provisions of section 45(3) provides that when a person transfer his capital asset to a firm or a body of individual or to AOP by way of capital contribution for becoming a partner/member therein, then for the purposes of section 48 of the Act, the amount recorded in the books of account of the assessee firm or AOP, the value of the capital asset shall be deemed to be full value of consideration received or accruing as a result of the transfer of capital asset. As per the deeming fiction an amount recorded in the books of account thereby the full value of consideration for the purpose of section 48 of the Act. We noted that the provisions of section 45(3) of the Act is a charging provision having two limbs joined by conjunction "AND". The first limb is a charging provision which levies capital gain tax on gains arising from contribution of capital asset in the AOP by a member and second limb is an essential deeming fiction for determining the value of consideration without which the charging provision would fail. We also noted that the provisions of section 50C of the Act also deeming fiction deems only the value of consideration for the purpose of calculating capital gains in the transfer of capital asset from one person to another. In view of the above, we are of the view that the provisions of section 50C of the Act are not applicable in the instant case and provision of section 45(3) of the Act will be applied.

Judgments Relied upon by the Authorities:

Voltas Ltd. v. *ITO* [2016] 74 taxmann.com 99 (Mumbai)

Manju Kaushik ITA No. 1419/JP/2019 Jaipur ITAT

Issues discussed and addressed:

Limited Scrutiny vs Complete Scrutiny

Facts of the Case:

Assessee's case whereby AO initiated proceedings by issue notice under section 143(2) on 18-9-2015 as regards the issue of introduction of capital/incease in the capital. Subsequently, AO converted limited scrutiny into complete scrutiny and issued notice under section 142(1) on 25-11-2016, whereby AO proposed to disallow claim of deduction under section 54B. Assessee took plea of CBDT Instruction No. 5/2016, dt. 14-7-2016 and challenged validity of assessment framed by AO for want of jurisdiction to take up the issue of disallowance of deduction under section 54B without having necessary approval of conversion of limited scrutiny to comprehensive scrutiny. Revenue's case was that AO had sent proposal for conversion of limited scrutiny to full scrutiny vide letter dated 11-11-2016 and Pr. CIT vide his letter dated 24-11-2016 accorded approval thereto. Accordingly, notice issued under section 142(1) on 25-11-2016 was only after approval was accorded by Pr. CIT on 24-11-2016.

Held by the Authorities:

Though AO had mentioned that approval was accorded by Pr. CIT on 24-11-2016 and consequently he had initiated proceedings of complete scrutiny by issuing notice dated 25-11-2016, however, said approval of Pr. CIT was communicated to AO only on 29-11-2016. Thus it was apparent that AO had initiated proceedings for fully/complete/comprehensive scrutiny, prior to receipt of approval accorded by Pr. CIT, in anticipation of approval to be accorded by the Pr. CIT and since at the time of initiating complete scrutiny, the issue under limited scrutiny was not pending with AO as he was satisfied with reply and documentary evidence on the said issue. Disallowance of deduction under section 54B prior to necessary approval communicated to AO was not sustainable.

Important updates

a. The Finance Minister, Smt. Nirmala Sitharaman has introduced the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 in the Lok Sabha. The bill seeks to amend various sections of the Income-tax Act.

b. The Central Board of Direct Taxes (CBDT) has laid down guidelines for compulsory selection of returns for scrutiny assessment during the Financial Year 2020-21. The guidelines have been prepared keeping in view of Faceless Assessment Scheme & difficulties being faced amid COVID-19 pandemic.

c. The Central Board of Direct Taxes (CBDT) has notified 'L&T Infra Debt Fund (PAN: AACCL4493R)' for the purposes of the section 10(47) of the Income-tax Act, 1961. Exemption shall be available if Infrastructure debt fund shall comply with the provisions of the Income-tax Act, 1961, rule 2F of the Income-tax Rules, 1962 and the conditions provided by the Reserve Bank of India.